

Cote, D.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SENT  
TRONICALLY

6/20/2014

ADALBERTO GONZALEZ,

Plaintiff,

**STIPULATION OF  
SETTLEMENT**

-against-

13 Civ. 3593 (DLC)

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT, POLICE OFFICER EDWARD MCCLAIN,  
an employee of the City of New York/New York City Police  
Department and SERGEANT FERNANDO SANTOS, an  
employee of the City of New York/New York City Police  
Department,

Defendants.

WHEREAS, plaintiff commenced this action by filing a complaint on or about  
May 29, 2013, alleging that the defendants violated plaintiff's federal civil and state common  
law rights; and

WHEREAS, defendants City of New York, The New York City Police  
Department, Officer Edward McClain and Sergeant Fernando Santos have denied any and all  
liability arising out of plaintiff's allegations; and

WHEREAS, defendant City of New York served plaintiff with an Offer of  
Judgment pursuant to Fed. R. Civ. P. 68 on April 15, 2014; and

WHEREAS, plaintiff accepted defendant's Rule 68 Offer of Judgment on May  
29, 2014; and

WHEREAS, plaintiff has authorized his counsel to settle this matter on the terms  
set forth below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiff Adalberto Gonzalez the sum of Two Hundred Fifty Thousand and One (\$250,001.00) Dollars plus reasonable attorneys' fees, expenses, and costs up to April 15, 2014, the date of the Offer of Judgment, in full satisfaction of all claims by plaintiff against defendants. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights and any and all related state law claims, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiff has assigned his rights to attorneys' fees, expenses, and costs to his attorneys, Beldock, Levine & Hoffman LLP, and Ronai & Ronai LLP.

4. Plaintiff shall execute and deliver to defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph "2" and "3" above and an Affidavit of Status of Liens. Prior to tendering the requisite documents to effect this settlement, Medicare-recipient plaintiffs must obtain and submit a final demand letter from Medicare for the reimbursement of any conditional payments made by Medicare for any injury or condition that is the subject of this

lawsuit. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

5. The City of New York hereby agrees to pay counsel for plaintiff, Ronai & Ronai, LLP and Beldock, Levine & Hoffman LLP, reasonable attorneys' fees, expenses, and costs, to be determined at a later date, up to the date of the Offer of Judgment referenced in paragraph "2" above. Counsel for plaintiff hereby agrees and represents that no other claim for attorneys' fees, costs, or expenses arising out of this action shall be made by or on behalf of plaintiff in any application for attorneys' fees, costs, or expenses at any time.

6. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation, Rule 68 Offer, Acceptance thereof shall not be admissible in, nor are they related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

7. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

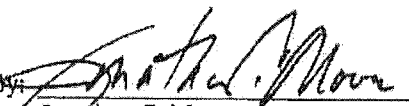
8. Plaintiff agrees to hold harmless defendants regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

9. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

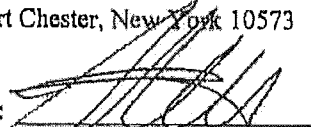
Dated: New York, New York

June 18, 2014


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By:   
Brian Francolla  
*Senior Counsel*

**SO ORDERED:**

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**U.S.D.J.**

*enc*

June 20, 2014